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The merchandise marks
manual

Calcutta

1917

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THE MERCHANDISE **MARKS MANUAL**

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PUBLISHED UNDER THE
AUTHORITY OF THE
GOVERNMENT OF INDIA



THIRD AND REVISED EDITION

CALCUTTA
SUPERINTENDENT GOVERNMENT PRINTING, INDIA
1917

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THE MERCHANDISE MARKS MANUAL

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MARKS MANUAL

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1917

INTRODUCTORY NOTE.

THE manual is in the following parts :—

- I. Extracts from the Indian Merchandise Marks Act, and connected Acts.
- II. Notifications under the same.
- III. General Instructions.

In the Instructions the following classification of goods is adopted :—

- A. Goods having applied to them counterfeit trade marks or other indications that they are the manufacture or merchandise of a *person* whose manufacture or merchandise they are not.
- B. Goods having applied to them false trade descriptions or other indications in respect of the *country* in which they were made or produced.
- C. Goods having applied to them false trade descriptions that are false in other respects.
- D. Piece-goods which have not the length properly stamped on each piece.

Class B is further subdivided into—

- (a) Goods made or produced in a foreign country, that is, beyond the limits of the United Kingdom and British India, and bearing or purporting to bear *the name or trade mark* of any person who is a manufacturer, dealer or trader in British India or the United Kingdom.
- (b) Goods made or produced beyond the limits of the United Kingdom or British India, to which is applied a *false trade description or indication* (other than the name or trade mark of a manufacturer, dealer or trader in the United Kingdom or British India) indicating that they were made or produced in the United Kingdom or British India.
- (c) Goods made or produced in one foreign country but bearing a *false trade description* indicating that they were made or produced in another.

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THE MERCHANDISE MARKS MANUAL.

PART I.—PRINCIPAL PROVISIONS OF THE INDIAN MERCHANDISE MARKS ACT, 1889, AND CONNECTED ACTS RELAT- ING TO MERCHANDISE MARKS.

Sea Customs Act, 1878, section 18.—No goods specified in the following clauses shall be brought, whether by land or sea, into British India:—

Indian Marks Act, 1889, section 10.	Merchandise	Prohibitions on importa- tion
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(d) Goods having applied thereto a counterfeit trade mark within the meaning of the Indian Penal Code, or a false trade description within the meaning of the Indian Merchandise Marks Act, 1889.

(e) Goods made or produced beyond the limits of the United Kingdom and British India, and having applied thereto any name or trade mark being, or purporting to be, the name or trade mark of any person who is a manufacturer, dealer or trader in the United Kingdom or in British India, unless—

(i) the name or trade mark is, as to every application thereof, accompanied by a definite indication of the goods having been made or produced in a place beyond the limits of the United Kingdom and British India, and

(ii) the country in which that place is situated is in that indication indicated in letters as large and conspicuous as any letter in the name or trade mark, and in the same language and character as the name or trade mark.

(f) Piece-goods, such as are ordinarily sold by length or by the piece, which—

(i) have not conspicuously stamped in English numerals on each piece the length thereof in standard yards, or in

standard yards and a fraction of such yard, according to the real length of the piece, and

- (ii) have been manufactured beyond the limits of India, or
- (iii) having been manufactured within those limits, have been manufactured beyond the limits of British India in premises which, if they were in British India, would be a factory as defined in the Indian Factories Act, 1881.

Note.—For definition of piece-goods, see Part II.

Definitions.

Indian Merchandise Marks Act, 1889, section 2
(1).—Trade Mark has the meaning assigned to that expression in section 478 of the Indian Penal Code as amended by this Act.

Trade Mark.

Indian Penal Code, section 478.—A mark used for denoting that goods are the manufacture or merchandise of a particular person is called a trade mark, and for the purposes of this Code the expression "trade mark" includes any trade mark which is registered in the register of trade marks kept under the Patents, Designs and Trade

46 & 47 Vict., c. 57. Marks Act, 1883, and any trade mark which, either with or without registration, is protected by law in any British possession or foreign State to which the provisions of the one hundred and third section of the Patents, Designs and Trade Marks Act, 1883, are, under Order in Council, for the time being applicable.

Counterfeit.

Indian Penal Code, section 28.—A person is said to "counterfeit" who causes one thing to resemble another thing intending by means of that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised.

Explanation 1.—It is not essential to counterfeiting that the imitation should be exact.

Explanation 2.—When a person causes one thing to resemble another, and the resemblance is such that a person might be deceived thereby, it shall be

presumed until the contrary is proved, that the person so causing the one thing to resemble the other thing intended by means of that resemblance to practise deception or knew it to be likely that deception would thereby be practised.

Indian Merchandise Marks Act, 1889, section 2 Trade description.
(2).—"Trade description" means any description, statement or other indication, direct or indirect,—

- (a) as to the number, quantity, measure, gauge or weight of any goods, or
- (b) as to the place or country in which, or the time at which, any goods were made or produced, or
- (c) as to the mode of manufacturing or producing any goods, or
- (d) as to the material of which any goods are composed, or
- (e) as to any goods being the subject of any existing patent, privilege, or copyright;

and the use of any numeral, word or mark which according to the custom of the trade is commonly taken to be an indication of any of the above matters shall be deemed to be a trade description within the meaning of this Act.

(3) "False trade description" means a trade description which is untrue in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement or otherwise, where that alteration makes the description untrue in a material respect, and the fact that a trade description is a trade mark or part of a trade mark shall not prevent such trade description being a false trade description within the meaning of this Act.

Indian Merchandise Marks Act, 1889, section 4 Provisions supplemental to the definition of false trade description.
(1).—The provisions of this Act respecting the application of a false trade description to goods or respecting goods to which a false trade description is applied, shall extend to the application to goods of any such numerals, words or marks, or arrangement or combination thereof, whether including a trade mark or not, as are or is reasonably calculated to lead persons to believe that the goods are the manufacture

or merchandise of some person other than they really are and to goods having such numerals, words or marks, or arrangement or combination, applied thereto.

(2) The provisions of this Act respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, shall extend to the application to goods of any false name or initials of a person, and to goods with the false name or initials of a person applied in like manner as if such name or initials were a trade description, and for the purpose of this enactment the expression false name or initials means, as applied to any goods, any name or initials—

- (a) not being a trade mark, or part of a trade mark, and
- (b) being identical with, or a colourable imitation of, the name or initials of a person carrying on business in connection with goods of the same description and not having authorised the use of such name or initials.

(3) A trade description which denotes or implies that there are contained in any goods to which it is applied more yards, feet or inches than there are contained therein standard yards, standard feet or standard inches is a false trade description.

Sea Customs Act, 1878, section 19-A (3).—Where there is on any goods a name which is identical with, or a colourable imitation of, the name of a place in the United Kingdom or British India, that name, unless accompanied in equally large and conspicuous letters and in the same language and character, by the name of the country in which such place is situate, shall be treated for the purposes of section 18 as if it were the name of a place in the United Kingdom or British India.

Indian Merchandise Marks Act, 1889, section 5 (2).—A trade description shall be deemed to be applied whether it is woven, impressed or otherwise worked into or annexed or affixed to the goods or any covering, label, reel or other thing.

Identical names of places.

Application of trade description.

(3) The expression "covering" includes any Covering. stopper, cask, bottle, vessel, box, cover, capsule, case, frame or wrapper, and the expression "label" includes any band or ticket.

Indian Merchandise Marks Act, 1889, section 2 Goods.

(4).—"Goods" means anything which is the subject of trade or manufacture.

(5) "Name" includes any abbreviation of a Name. name.

General Clauses Act, 1897, section 3 (39).—Person. "Person" shall include any company or association or body of individuals, whether incorporated or not.

Indian Merchandise Marks Act, 1889, section 21. Evidence of origin.—In the case of goods brought into British India by sea, evidence of the port of shipment shall, in a prosecution for an offence against this Act or section 18 of the Sea Customs Act, 1878, as amended by this Act, be *prima facie* evidence of the place or country in which the goods were made or produced.

Indian Merchandise Marks Act, 1889, section 21. Information as to commission of offences.—An officer of the Government whose duty it is to take part in the enforcement of this Act shall not be compelled in any Court to say whence he got any information as to the commission of any offence against this Act.

Sea Customs Act, 1878, section 19-A.—Clauses Rules and (2), (4), (5), (6) enable the Governor-General in Council to make regulations respecting the conditions, if any, to be fulfilled before such detention and confiscation, to determine the information, notices and security to be given, the evidence requisite for any of the purposes of the section and the mode of verification of such evidence, as well as the reimbursement of public officers and the State by an informant for expenses and damages incurred in respect of any detention made on his information, and of any proceedings resulting therefrom. Section 19A (1) authorises the Customs authorities to require regulations so issued to be complied with before taking proceedings.

Indian Merchandise Marks Act, 1889, section 16 (1).—The Governor-General in Council may, by notification in the *Gazette of India* and in local official Gazettes, issue instructions for observance by

Rules and Regulations.

Criminal Courts in giving effect to any of the provisions of this Act.

(2) Instructions under sub-section (1) may provide, among other matters, for the limits of variation, as regards number, quantity, measure, gauge or weight, which are to be recognized by Criminal Courts as permissible in the case of any goods.

Note.—Such instructions are also a guide to Customs officers.

Indian Merchandise Marks Act, 1889, section 19.
—For the purposes of section 12 of this Act and clause (f) of section 18 of the Sea Customs Act, 1878, as amended by this Act, the Governor-General in Council may, by notification in the *Gazette of India*, declare what classes of goods are included in the expression 'piece-goods' such as are ordinarily sold by length or by the piece.

Indian Merchandise Marks Act, 1889, section 20.
—This section enables the Governor-General in Council to make rules regulating with respect to any goods the first selection and testing of samples, the value of the evidence so obtained, the conditions under which a further selection and testing may be made, and the value of the further evidence so obtained.

For goods not covered by such rules the section enables Customs officers to issue orders having a similar effect, namely:—

(2) The . . . officer of Customs . . . having occasion to ascertain the number, quantity, measure, gauge or weight of the goods, shall, by order in writing, determine the number of samples to be selected and tested and the manner in which the samples are to be selected.

(3) The average of the results of the testing in pursuance of . . . an order under sub-section (2) shall be *prima facie* evidence of the number, quantity, measure, gauge or weight, as the case may be, of the goods.

(4) If a person having any claim to, or in relation to, any goods of which samples have been selected and tested in pursuance of . . . an order under sub-section (2) desires that any further samples of the goods be selected and tested, they shall, on his

written application and on the payment in advance by him to the . . . officer of Customs . . . of such sums for defraying the cost of the further selection and testing as the . . . officer may from time to time require, be selected and tested to such an extent as . . . the officer of Customs may determine in the circumstances to be reasonable, the samples being selected in manner prescribed under . . . sub-section (2)

(5) The average of the results of the testing referred to in sub-section (3) and of the further testing under sub-section (4) shall be conclusive proof of the number, quantity, gauge or weight, as the case may be, of the goods.

PART II.—NOTIFICATIONS UNDER THE IN-
DIAN MERCHANDISE MARKS ACT,
1889, AND CONNECTED ACTS.

No. 1430, dated the 6th April 1891, as subsequently amended.—In exercise of the powers conferred by section 19-A, sub-section (2), of the Sea Customs Act, 1878 (as amended by section 11 of the Indian Merchandise Marks Act, 1889), and sections 19 and 20 of the Indian Merchandise Marks Act, 1889 (as amended by Act IX of 1891), the Governor-General in Council is pleased to make the subjoined rules and orders:—

1. Piece-goods, such as are ordinarily sold by Stamping of length or by the piece, shall be deemed to include ^{piece-goods} woollen goods of all kinds and the undermentioned descriptions of cotton goods, namely:—

Book-binding cloth.	Mulla.
Brocades.	Muslins.
Cambrics.	Nainsooks.
Canvases.	Net.
Crimps.	Oxfords.
Checks, spots and stripes.	Prints.
Chudders.	Saris, single or in pairs.
Coatings including tweeds, cashmeres and serges.	Scarves, including cotton shawls and dupettas.
Crape.	Sheetings.
Denims.	Shirtings, including dyed shirtings.
Dhotis, single or in pairs.	Silecia.
Domestics.	Spanish stripes.
Dorias.	Tanjibs.
Drills.	Tick.
Flannel and flannelettes.	Trouserings.
Gauze.	Tussore.
Grenadines.	Twilla.
Harvards.	T-cloth and Mexicans.
Italian cloth.	Umbrella cloth.
Jaconets.	Velvets and velveteen.
Jeans.	Venetian cloth.
Lappets.	Vestings, including mattinges and piques.
Lawns, including allovers.	Waste coatings.
Lenos.	Zephyr cloth.
Long cloth.	
Madraspollams.	
Meltons, dyed and printed.	

2. Other classes of piece-goods shall not be detained if unstamped; and unstamped cotton and woollen

piece-goods imported for the personal use of individuals or private associations of individuals and not for trade purposes shall not be detained.

3. Examinations of packages to ascertain whether the goods mentioned in Rule 1 are stamped shall be made at frequent intervals at the discretion of the Customs Collector and either under his personal instructions or under general orders and instructions given by him to an Assistant Collector.

4. The piece-goods contained in the packages so examined need not be examined, when found to be stamped, to test the accuracy of the stamping, except on information received, or when the Customs Collector has reason to suspect that the stamping is false.

5. All measurements of piece-goods shall be made on the table.

Testing of
yarns.

6. Yarns need not be examined or measured, except on information received, or when the Collector has reason to suspect that the trade description is false.

7. An examination of yarns to test the accuracy of the description of count or length shall be made, in the first instance, up to the limit of one bundle in every one hundred bales or fraction of one hundred bales in the consignment.

8. If, on such examination, the difference between the average count or length and the described count or length is in excess of the variations permitted in paragraphs III and IV of the Notification of the Government of India in the Home Department, No. 1474 (Judicial), dated the 13th November 1891, the importer may require a further examination to be made up to the limit and on the condition stated in Rule 9.

9. The test to determine length of yarns shall be applied as follows:—

From every one hundred bales, or fraction of 100 bales, in a consignment one bundle should be selected at random. The hanks in this bundle should then be measured on the wrap-reel, one after the other, in the presence of a representative of the importer, and the lengths noted, the process being continued (within the limits of the bundle) until either the

importer is satisfied that the yarn is short, or the average of the lengths noted shows that it is of full length.

When the importer is dissatisfied with this test, he may, on payment of the cost, require the Customs Collector to measure more hanks up to 1 per cent. of the total number of hanks in the consignment, such hank being taken at random by an officer of Customs out of any bundles in the consignment.

10. The Customs Collector may require from any informant a security not exceeding five hundred rupees. If the Collector should be satisfied that the information given is wilfully false, the security shall be forfeited.

No. 1474, dated the 13th November 1891, as Trade subsequently amended.—In exercise of the powers descriptions of length conferred by section 16 of the Indian Merchandise of length and width. Marks Act, IV of 1889, and in supersession of all existing orders on the subject, the Governor-General in Council directs that Criminal Courts, in giving effect to the provisions of the Act in respect of trade descriptions of quantity, measure, or weight of the goods specified hereunder, shall observe the following instructions:—

I.—A trade description of length stamped on grey, white, or coloured cotton piece-goods shall not be deemed to be false in a material respect, unless—

(a) where a single length is stamped, the description exceeds the actual length by more than—

4 inches in pieces stamped as 10 yards long and under;

5 inches in pieces stamped as above 10 yards and up to 23 yards long;

7 inches in pieces stamped as above 23 yards and up to 36 yards long;

9 inches in pieces stamped as above 36 yards and up to 47 yards long;

18 inches in pieces stamped as above 47 yards long;

Provided that the average length of the goods in question shall not be less than the stamped length;

(b) where a maximum and a minimum length are stamped, the described maximum

length is greater than the actual length by more than—

- 9 inches in piece-goods under 35 yards long;
- 18 inches in piece-goods 35 yards and up to 47 yards long;
- 36 inches in piece-goods above 47 yards long :

Provided that no such piece shall measure less than the minimum stamped length.

II.—A trade description of width stamped on *grey, white, or coloured cotton piece-goods* shall not be deemed to be false in a material respect, unless the description exceeds the actual width by—

- half an inch in pieces stamped as 40 inches or less in width;
- three-quarters of an inch in pieces stamped as over 40 inches or under 59 inches in width;
- one inch in pieces stamped as 59 inches or more in width :

Provided that the average width of the goods in question shall not be less than the stamped width.

Trade
descriptions
of count.

III.—A trade description of count or number, length or weight, applied to *grey, or bleached cotton yarn*, shall not be deemed to be false in a material respect, unless—

- (a) the described count or number is greater or less than the actual count or number by more than 5 per cent., provided that the average count of the whole of the yarn in question is not greater or less than the described count; or
- (b) the average length of the whole number of hanks in a bundle is less than 840 yards; or
- (c) in a bundle of yarn of any count under 50, described as being ten pounds in weight, the number of knots of twenty hanks each is not half, or the number of knots of ten hanks each is not the same as, and the number of knots of five hanks is not double, the described count or number of the yarn; or
- (d) in a bundle of yarn of any count under 50, described as being 5 lbs. in weight,

the number of knots of 20 hanks each is not a quarter of, or the number of knots of 10 hanks each is not half, or the number of knots of 5 hanks each is not the same as, the described count or number of the yarn; or

- (e) in a bundle of yarn of any count from 50 upwards, the number of knots of twenty hanks each is not half, or the number of knots of 40 hanks each is not a quarter when the described weight is ten pounds, and is not a quarter or an eighth, when the described weight is five pounds, of the count or number of the yarn; or
- (f) in the case of *bleached yarn*, the described weight exceeds the actual weight by more than—

- 7½ per cent. in counts from 1 to 8;
- 5 per cent. in counts from above 8 to 18;
- 4 per cent. in counts from above 18 to 30;
- 2½ per cent. in counts from above 30 to 80.

IV.—A trade description of count or number applied to a bundle of *dyed cotton yarn* shall be accepted as indicating length only, the hank being taken to measure 840 yards, and it shall be deemed to be false in a material respect if the average length of the hanks in a bundle is less than 819 yards.

V.—A trade description of length applied to *thread of any kind* (of cotton, wool, flax or silk) shall not be deemed to be false in a material respect, unless it exceeds the actual length by more than 1 per cent.

VI.—The dimensions of goods on which their length or width is stamped shall be determined by measurement in imperial yards of thirty-six inches.

The grant of rewards is controlled by rules issued Rewards, with Resolution No. 1088-S. R., dated the 23rd February 1901, which are applicable generally to all cases under the Sea Customs and Indian Merchandise Marks Acts. The Resolution states that it is

undesirable in practice to grant rewards to gazetted officers, but it was held in letter No. 4080-S. R., dated the 3rd August 1901, to the Government of Madras that the prohibition does not apply to gazetted officers below the rank of Assistant Collector.

PART III.—INSTRUCTIONS FOR THE OBSERVANCE OF CUSTOMS OFFICERS.

Note.—The word "Act" when used in these rules, unless the contrary is apparent, is intended to include, in addition to the Indian Merchandise Marks Act, the connected provisions of the Sea Customs Act.

1. The following classes of goods are exempt from the operation of the Act:—

General
exemptions.

(a) Goods not having applied to them any marks, trade descriptions, or other indications whatever of the nature contemplated in the Act, with the exception of piece-goods which require to be stamped under section 10 (f) corresponding to section 18 (f) of the Sea Customs Act.

(b) Goods imported for the personal use of individuals or private associations of individuals, and not for trade purposes. Thus, cloth imported by an individual for his own use or hand instruments by a regimental band for the use of the members, are exempt; but not rails imported by a railway company, or cutlery and glassware by a hotel (see also paragraph 2, Notification No. 1430, dated the 6th April 1891, as subsequently amended, quoted in Part II).

Exemptions from particular provisions of the Act are noted later in connection with the provisions concerned.

Indian Merchandise Marks Act, 1889, section 10 (d), read with sections 4 (1) and (2), and 10 (2).

2. Goods affected by the Act may be classified as follows:—

A.—Goods having applied to them counterfeit trade marks, or of goods other indicated by the Act.
Classification of goods affected by the Act.
Section 10 (d).
tations that they are the manufacture or

merchandise of a *person* whose manufacture or merchandise they are not.

- B.—Goods having applied to them false trade descriptions or other indications in respect of the *country* in which they were made or produced.

- C.—Goods having applied to them trade descriptions that are false also in other respects.

Section 10 (d).

- D.—Piece-goods which have not the lengths properly stamped on each piece.

Section 10 (f).

The importation of all such goods is prohibited by section 18 (d), (e) and (f) of the Sea Customs Act.

It has been ruled that the indication alluded to in the words "any description, statement, or other indication, direct or indirect," in the definition of trade description, must be in the nature of a description or statement and does not include the "make up" of goods. The "make up" of goods does not therefore amount to a trade description in itself.

A.—GOODS HAVING APPLIED TO THEM COUNTERFEIT TRADE MARKS OR OTHER INDICATIONS THAT THEY ARE THE MANUFACTURE OR MERCHANDISE OF A PERSON WHOSE MANUFACTURE OR MERCHANDISE THEY ARE NOT.

Counterfeit trade marks and similar indications.

3. The indications referred to, in addition to (1) counterfeit trade marks, include (2) any such numerals, words, or marks, or arrangement or combination thereof, whether including a trade mark or not, as are or is, reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than they really are, or (3) any false name or initials of a person, that is, any name or initials—

Section 4 (2).

- (a) not being a trade mark or part of a trade mark, and

- (b) being identical with, or a colourable imitation of, the name or initials of a person carrying on business in connection with goods of the same description and not having authorized the use of such name or initials.

Items (2) and (3) of this rule incorporate section 4 (1) and (2) of the Indian Merchandise Marks Act. Without these clauses marks imitating another person's marks would only be controlled if they constituted a counterfeit trade mark, or happened incidentally to constitute a false trade description of country of manufacture, material or the like within the meaning of any of the clauses of section 2 (2). But two further classes of cases may arise:—

A manufacturer's or merchant's marks may include many other marks or combinations of marks than a trade mark and goods may be known by such marks better than by the trade mark itself. For example, piece-goods are sometimes identified in the native market by their coloured labels or even by the manufacturer's or merchant's number impressed on them. Secondly, the merchandise of a particular firm may similarly be known by the firm's name or initials, which may not be included in the trade mark. The provisions cited are intended to meet cases in which such marks, numbers, etc., are used by other parties, or in which the use of such names or initials is not covered or condoned by the necessary authorization. In such cases the procedure to be adopted by Customs officers will be that prescribed below in rule 9.

4. The importation of goods having applied to them a counterfeit trade mark or any of the indications described is prohibited by section 18 (d) of the Sea Customs Act, read with section 4 (1) and (2) of the Indian Merchandise Marks Act. These provisions are intended not only for the protection of manufacturers and merchants against the piracy of their marks, but also for the protection of the public against the supply of goods of an inferior or unknown quality under cover of a well-known brand. Although therefore action will ordinarily be taken upon information received from the manufacturer

or merchant aggrieved, Customs officers are not debarred from acting upon their own initiative.

Detention
on informa-
tion.

5. When information of the nature referred to in rule 4 is received, unless it is in writing and supplies all necessary details, the informant should be required to furnish the Collector or Chief Customs officer with a notice in the form A appended. Upon arrival of the goods, if the Collector or Chief Customs officer is of opinion that there is clearly no reasonable cause for detention, he will permit delivery to the consignee. Otherwise he will detain the goods provisionally and require the informant either—

- (a) to furnish him with an indemnity bond in the form B appended within twenty-four hours; or
- (b) to deposit security in cash or currency notes to the amount of 10 per cent. on the estimated value of the goods to reimburse any expenses incurred or damages awarded in respect of the detention, or of any proceedings consequent thereon, pending the execution of the bond, which in such cases should be furnished within four days.

Upon receipt of the bond duly executed the security deposit may be returned.

If the indemnity bond or the security, as the case may be, be not furnished within twenty-four hours, or if the bond following the security be not furnished within four days, the Collector will release the goods.

If the bond be furnished the Collector will detain the goods for one month from the date of the request for the detention in order to allow of the applicant filing a suit or taking other proper proceedings to have his rights in respect of them declared or ascertained, provided that if he institute a suit or take other proper proceedings for the purpose stated within the period named the goods should be detained until a final decree in the suit or order in the proceedings has been obtained, such decree or order in the case of an appeal being that of the highest Appellate Court to which the appeal is taken. If the applicant does not file a suit or take other proper

proceedings as above stated within the period named, the goods will be released.

6. When an informant is not in possession of information of any definite case of importation or contemplated importation, but has reason to believe that his marks, etc., are being infringed and wishes to have Customs officers put on the watch for possible infringements, his application may be entertained if the Collector or Chief Customs officer is satisfied that it is *bona fide* and reasonable, and orders may be issued to Customs officers to take a note of the marks, etc., concerned with a view to taking action under paragraph 8 should occasion arise. Such orders should only have effect for three months, but may be renewed on the expiry of the period upon the Collector being satisfied that there are reasonable grounds for the renewal.

Watching
for marks.

7. Any formal registration of marks, names, or initials in the Customs offices is prohibited.

Registra-
tion pro-
hibited.

8. The occasions on which Customs officers should take action upon their own initiative will naturally be rare, but will occur when upon an examination of the goods it is apparent that an attempt has been made to counterfeit some established mark or other indication, such as is well known to the officer concerned. In such cases the Collector or Chief Customs officer will cause the goods to be provisionally detained for a period not exceeding four days, and send intimation to any local representative of the person whose name or marks appear to be counterfeited, with the request that he will take action if he wishes the detention continued as described in clauses (a) and (b) of rule 5 above. The subsequent procedure will follow that detailed above.

Customs
initiative.

If there is no local representative the Collector or Chief Customs officer will pass the goods, but should send intimation by letter with sufficient particulars of the counterfeit marks or other indications to the person whose name or marks appear to have been counterfeited, describing the procedure to be adopted under these rules, should he wish to have any future consignments detained.

9. The powers of enquiry which the Collector possesses in regard to goods detained under the above

Procedure
upon deten-
tion.

rules are strictly limited and are only intended to enable him to satisfy himself that the counterfeit is plain and manifest and that there can be no real contest in the matter. For any purpose beyond this, his duty is to detain, under protection of an indemnity bond, the goods until the question of title is settled by a competent court. He should not therefore ordinarily take proceedings under the Sea Customs Act for the confiscation of goods detained under the above rules, or for the imposition of a penalty, upon his own responsibility, except in the following cases, namely, when the marks on the goods are admitted by the importer to be objectionable either as counterfeit trade marks, or as being of the description stated in section 4 (1) and (2) of the Indian Merchandise Marks Act; or when the Collector or Chief Customs officer is satisfied by the production of a duly certified copy of an order by a competent court that they have been declared by such a competent court either in British India or in the United Kingdom to be so objectionable, and provided that in this case no claim is made on behalf of the importer of a right to use the marks upon grounds not covered by the order cited. If such a claim be made the procedure laid down in rule 5 should be followed in respect of the importation.

B.—GOODS HAVING APPLIED TO THEM FALSE TRADE DESCRIPTIONS OR OTHER INDICATIONS IN RESPECT OF THE COUNTRY IN WHICH THEY ARE MADE OR PRODUCED.

Classes of cases.

10. Under this head three principal classes are to be distinguished:

- (a) Goods made or produced beyond the limits of the United Kingdom and British India and bearing or purporting to bear the *name or trade mark* of any person who is a manufacturer, dealer or trader in the United Kingdom or British India.
- (b) Goods made or produced beyond the limits of the United Kingdom and British India, to which is applied a *false trade description for indication* (other than

the name or trade mark of a manufacturer, dealer or trader in the United Kingdom or British India) indicating that they were made or produced in the United Kingdom or British India.

- (c) Goods made or produced in one foreign country, but bearing a *false trade description* indicating that they were made or produced in another.

11. The importation of goods falling under either of these three classes is equally prohibited by law under section 18 (d) and (e) of the Sea Customs Act and Customs officers should of their own motion detain goods falling under any of the three classes.

Note.—Samples or patterns readily distinguishable as such and valueless in themselves are not to be treated as subject to the provisions of the Act referring to the marking of indication of origin.

12. The law (section 13 of the Indian Merchandise Marks Act) also states that evidence of the port of shipment is *prima facie* evidence of the country in which the goods were made or produced. This country of ruling, however, should be applied with discretion when the port of shipment is a place of transit from some inland country like Rotterdam or Antwerp with respect to Germany, or Trieste with respect to Italy or Switzerland. In the case of goods shipped from these ports, the statement that the goods are the make or produce of an inland country may be accepted if there is no reasonable ground to suspect the country of origin.

13. Although the importation of goods falling under either of these three classes is prohibited, the goods may yet be admitted if there is applied to them a counter-indication of origin accompanying—

- (1) the name or trade mark in the case of goods falling under class (a);
- (2) the false trade description in the case of goods falling under classes (b) and (c).

14. In the former case, the nature of the counter-indication required to enable the goods to be imported is distinctly and specifically provided for by the law [see section 18 (e) of the Sea Customs Act].

- (1) The name or trade mark must be accompanied by a definite indication of the name or trade mark of the manufacturer or trader in the United Kingdom or British India.

factorer,
dealer or
trader in
the United
Kingdom
or British
India.

goods having been made or produced in a place beyond the limits of the United Kingdom or British India.

- (2) The country in which that place is situated must, in that indication, be indicated in letters as large and conspicuous as any letter in the name and trade mark, and in the same language and character as the name and trade mark.

Where, therefore, goods made elsewhere than in the United Kingdom or British India bear the name or trade mark, being or purporting to be the name or trade mark of a manufacturer, dealer or trader in the United Kingdom or British India, the counter-indication must distinctly specify the country of origin or manufacture. In such cases the form "Made in" must be used; other expressions such as "Made Abroad," "Not made in the United Kingdom or British India," "Foreign make," "Foreign Produce" are not permissible.

(b) In the case of goods bearing a false trade description as to origin.

15. The law does not, however, require a specific counter-indication in other cases. In the case of goods falling under class (b) or (c), the Customs officers cannot insist that the false trade indication should be corrected by a definite indication of the country of origin, and any indication negating the implication that the goods were made or produced in another country is sufficient. In such cases, the following and similar expressions are admissible:—

Goods falling under class (b)	Made in.....
	Made Abroad.
	Not made in the United Kingdom or British India.
	Foreign make.
Goods falling under class (c)	Foreign produce.
	Made in.....
	Not made in X (being the country in which, from the false trade description, the goods might be supposed to have been manufactured).

Note.—(1) Goods made or produced in the United Kingdom bearing the name or trade mark of a British Indian trader or dealer are not subject to the provisions of the Act referring to the marking of origin even when the marking is in, or includes, vernaculars.

(2) In the case of goods made or produced in the United Kingdom bearing an indication of make or production in any other country, a counter-indication of British origin should be required. Examples:—The expression "Munich Beer" on

bottles containing beer made in England must have some such counter-indication as "Made in England" or "Not made in Germany." The expression "Amritsar" on shawls made in England must have some such counter-indication as "Made in England" or "Not made in India."

(3) In the case of goods made or produced in a foreign country, the trade description indicative of origin in British India or the United Kingdom which has been corrected by the use of such expressions as "Made Abroad," "Not made in the United Kingdom or British India," may still be false if the description contains an indication of origin in one foreign country when the goods were actually made or produced in another. As for instance, "Old Brown Cognac, Made Abroad," which was actually made in Germany. In such cases, a further counter-indication is necessary. This can be done in two ways. Either the name of the country of manufacture or production may be substituted for such phrases as "Made Abroad;" or the counter-indication must run "Not made in the United Kingdom or British India or X (X being the country in which the goods might be supposed to be manufactured)." Thus in the example given, "Not made in France" must be added to the description or the words "Made in Germany" must be substituted for the words "Made Abroad."

16. In the case of goods with distinguishable parts or constituents manufactured or produced in different countries, an indication of origin in any country on one part should be taken, in the absence of anything to the contrary, as applicable to the whole.

Example.—A British or German hall-mark on the case of a silver watch should be held to include the works and dial-plate also, and if the works and dial-plate are not of English or German make, as the case may be, a counter-indication should be required on the latter.

17. In the case of goods with indistinguishable parts or constituents made in different countries, a general statement such as "Produce of different countries" is permissible.

Example.—Brandy blended in the United Kingdom from the produce of France or Italy.

Note.—In the case of goods with indistinguishable parts or constituents made in the United Kingdom and other countries, the above counter-indication will be sufficient even when the goods bear the name or trade mark of a British or British Indian trader or dealer.

18. The names of provinces or towns may only be substituted for those of countries if they are so extensively known that the Indian consumer is not likely to be misled. Names such as Paris, Bohemia, Berlin, are permissible, but not Milan or Baden.

Substitution of names of provinces or towns for those of countries.

Marking of
indication
of origin. ;

19. In cases where an indication of origin is required, the general rule is that the indication must be shown in letters as large and conspicuous as any letter in the name, trade mark or false description; it must be in the same language and character, and it must accompany every application of the name, trade mark or false description.

The size of the letters need not be rigidly insisted upon, provided that they are sufficiently conspicuous to catch the eye along with the name or trade mark.

The counter-indication should be adjacent on the same label, or part of the covering or goods, as the case may be, to which the name, trade mark or false trade description is applied: it should not be on a separate label, nor otherwise detachable from the application of the name, trade mark or false trade description itself; and it should be applied no less indelibly than the latter. It should be repeated for all applications of the name, trade mark or false trade description except when the latter are reproduced in such close proximity that one prominent counter-indication will suffice to cover all; and if different languages or characters, English or Indian, are used for the names or included in the trade marks, the counter-indication should be repeated in each language employed.

20. Customs officers should require the indication of the country of origin to be placed on the capsules and corks, as well as on the labels, of bottles of wine or other liquor produced or made beyond the limits of the United Kingdom or of British India whenever such goods are—

- (a) so described,
- (b) or have applied to them British or British Indian names or trade marks in such a manner,

as to indicate or suggest that the wine or other liquor was produced or made in the United Kingdom or in British India.

Note.—Rules 21 to 24 below apply only to goods falling under class (a) of Rule 10.

21. The legal provision requiring that the name or trade mark of a British Indian or English manufacturer, dealer or trader, when applied to goods not

Exemption
from legal
provision
requiring a

made in the United Kingdom or British India, should be accompanied by a counter-indication, is not to be enforced in the case of—

- (a) Indian produce and manufactures imported by sea from foreign Indian ports into British India, and bearing the name or trade mark of a British Indian trader or dealer.
- (b) Goods bearing the name or trade mark of a British Indian trader or dealer which are known or proved to be the produce of Africa, Arabia, Persia, or Turkey in Asia, with the exception of manufactured articles such as carpets, earthenware, shawls and silken or woollen goods. A list of such goods will be found in Appendix C.

The Local Governments are authorised to make additions to the list if and when it is found defective, but such additions are to be reported for the information of the Government of India.

- (c) Coverings or labels [as defined in section 5 (3) of the Indian Merchandise Marks Act] made in a foreign country bearing the name of a British Indian manufacturer, dealer or trader, where the name is intended to refer not to the covering or label, but to the goods to be covered or labelled, and is the name of a firm who have ordered the covering for their own goods.

Examples.—Cardboard boxes made in Germany bearing the name, trade mark or advertisement of, and imported by, a British Indian Soap Manufacturing Company to hold soap of their own manufacture; labels made outside the United Kingdom or British India bearing the name of, and imported by, a British Indian chemist to be attached to phials, boxes, etc., for dispensing purposes; photograph mounts made in a foreign country bearing the name and imported by a photographer in British India to be attached to his own photographs.

22. Initials of manufacturers, dealers or traders Initials in the United Kingdom or British India should not

counter-indication on foreign-made goods bearing a name or trade mark of a British or British Indian dealer.

be treated as names requiring a counter-indication of the country of origin, unless they are so extensively known in India as to be indistinguishable in effect from the full names which they represent, or are followed by affixes distinctly suggesting a British firm as "& Co.," (in the case of goods from Continental countries except Germany) and "Brothers" or "Bros."

Goods of a manufacturer having factories in different countries.

23. If a manufacturer has a factory in a foreign country as well as in the United Kingdom or British India, his name or trade mark requires a counter-indication, when applied to goods made in the foreign country. If a manufacturer having a factory beyond the limits of the United Kingdom or British India has only an agency or place of business within such limits, his name or trade mark of course requires a counter-indication whenever applied.

"Imported by" and similar expressions.

24. Such expressions as "imported by," "for sale by," "bottled by," and the like accompanying the names of British or British Indian dealers or traders do not render counter-indications less obligatory under the law although in connection with the general circumstances of a case they may justify relaxation of the provisions applicable.

Note.—Rules 25 to 37 below apply to goods falling under clauses (b) and (c) of Rule 10.

25. In these cases the offence consists in the use of false trade descriptions indicating that the goods are the produce or manufacture of a country in which they were not produced or manufactured.

Definition of false trade description.

26. A false trade description is defined in section 2 (3) of the Indian Merchandise Marks Act. It comprises any description, statement or other indication (including any numeral, word or mark which according to the custom of trade is commonly taken to be an indication) that the goods to which they are applied were made or produced in one country when such goods were really made or produced in another.

Use of geographical names in a trade description.

27. It is ruled by section 19A (3) of the Sea Customs Act that when any name on goods is identical with, or a colourable imitation of, the name of a place in the United Kingdom or British India, that name, unless accompanied in equally large and conspicuous letters, and in the same language and character, by the name of the country in which such place is

situate, is to be treated as if it were the name of a place in the United Kingdom or British India.

Example.—Boston, in Massachusetts, should be accompanied by the name "United States," or by the initials "U. S. A." or by the word "Massachusetts."

28. A trade description which, in indicating a particular class of goods or method of manufacture, includes the name of a place, is to be held as naming such a place or country. Such expressions as "Kidderminster carpets," "Portland cement," "Egyptian cigarettes," "Balbriggan" on hosiery, "Windsor soap," "Shetland," or "Amritsar" on shawls, or "Conjeevaram cloth," though they might be held to be merely phrases descriptive of method of manufacture, are yet calculated to mislead as to place of origin and require counter-indications when applied to goods made or produced in countries other than those in which the places are situated. Similarly counter-indications are required on wine, not the produce of Portugal or Spain and described respectively as "Port" or "Sherry" (which words include the names of the places Oporto and Xeres); on brandy not produced in France and described as cognac (which indicates production in France); on liquors not produced in France and described as "Chartreuse," "Benedictine" (which indicate production at particular places in France); on beer produced in England described as "Munich Beer" (which indicates production in Germany). Where, however, as in the case of "Lancashire Swedish" on Swedish iron, the qualifying word follows the misleading name, the description may be admitted.

An exception must be made where such a description has become associated, as in the case of "Russian leather" with a particular class of goods in a manner practically to preclude any probability of deception.

29. The use in a trade description of a language which is not the language of the country in which the goods were made or produced usually requires counter-indication. An exception may be allowed in cases in which a particular language is so commonly applied to certain goods by the custom of the trade that there is no reasonable likelihood of the consumer in India being misled. Thus Spanish

Use in a trade description of language not the language of the country in which the goods were made.

words applied only to colour, shape, size and the like, such as Reina, Fina, and Claro on the bands and boxes of German-made cigars, may be admitted without counter-indications, but any further indications of Havannah or other make, not being German, on the boxes should have a counter-indication applied to them.

(a) Use of the English language on goods not made in the United Kingdom or a British Colony.

30. The use of the English language in a trade description applied to goods not made in the United Kingdom or a British Colony is in itself to be regarded as indicative of British origin. This rule applies not merely to cases in which English words are used as trade descriptions, but extends to the use of descriptive terms or fancy names such as extra quality, gold medal, lever locks, bull-dog (on revolvers) and the like. The fact that words used in the English language are common to other languages also, such as Phoenix, Sardar, extra, patent, does not make counter-indications less necessary in India where other languages than English or Indian are not generally known.

Note.—In the case of American goods bearing English words or descriptions, a counter-indication of origin should be required.

31. No counter-indication is required on marks consisting of English letters only, provided that they do not form words or a trade mark, or represent any initials so extensively known as to require a counter-indication under rule 22 above, or amount to a trade description. Thus a counter-indication is not required for letters such as K. S. on copper, which convey no indication of British origin, although it would be needed for letters commonly used in the United Kingdom to indicate description or quality, as described in rule 29.

32. The use of the English language on foreign made goods is admissible as parts of the goods themselves.

Examples.—English verses and texts on 'Xmas and birthday cards; words such as "Photographs" and "Stamps" on albums; "Tobacco" on pouches; "Gold," "Silver," "Stamps" on the divisions of a purse; the names of hotels or purveyors on crockery intended for use by the establishments or firms whose names it bears; "Fast," "Slow," on regulators of

Swiss watches; regulating words such as "Blood Heat," "Boiling," "Freezing," on thermometers, or "Fair," "Rain," etc., on barometers; Christian names on handkerchiefs. The use on such goods, however, of names of makers, publishers, or dealers in this country, or of any description of the goods or address which would in any way suggest English origin, will involve detention. Expressions such as "Think of me," "For a good boy," on foreign goods must bear a statement of foreign origin.

33. Words in any Indian language, or letters or numerals in Indian character, or marks or devices, such as representations of Indian deities or emblems, which are reasonably calculated to lead persons to believe that the goods were made or produced in British India require counter-indications on the same principle when applied to goods made or produced beyond the limits of British India.

Note.—(1) An indication of the country of origin should not be insisted on when the only vernacular characters employed are the equivalent of numerals used as quality numbers.

(2) British goods, e.g., piece-goods, bearing trade descriptions such as "Very good quality," "Best cloth," "Very best borders," "Fast colour," etc., in vernacular characters, or bearing tickets with representations of Indian deities and mythological scenes with their names in vernacular characters, in conjunction with the name or trade mark of a British or Indian firm, should be passed without any counter-indication of origin. Such counter-indications should be insisted on only where such expressions as "Swadeshi," "Bande Mataram," "Cawnpore shoes," etc., are used, which apart from being in a vernacular character definitely indicate from their meaning that the goods were manufactured in India.

(3) No objection should ordinarily be taken to the application of tickets or designs representing Indian deities or emblems to British goods even when the name of the trader or the country of origin is not marked on such tickets or the goods. In particular cases, however, when there is good ground for considering that the use of such plain tickets or designs is specially designed to convey, and does in fact convey, the impression of Indian origin, they should be considered to be false trade descriptions. In deciding whether the use of a plain ticket or design constitutes a false trade description, regard should be had *inter alia* to priority of usage. For example, the subsequent application to British piece-goods of a ticket or design which has by usage become associated in the minds of dealers or consumers with Indian goods of a similar description should, in the absence of some counter-indication of British origin, be objected to; but a ticket or design previously associated with British piece-goods should not be objected to as indicative of Indian origin notwithstanding the later use of a similar ticket or design on goods of like description of Indian manufacture.

(c) Use of language of one foreign country on goods produced in another.

(d) Use of indications other than words suggesting a false origin.

Marking on packing cases and coverings.

False labels for wines or liquors.

34. The use of the language of one foreign country on goods produced in another must be dealt with similarly.

Examples.—Chinese characters applied to French silk; French descriptions applied to German brandy and on German scents; Russian descriptions on French Kummel.

35. The same principles should be applied to indications other than words—such as pictures, pictorial indications suggesting a false origin.

Examples.—Counter-indications are required on foreign made goods bearing the British Royal Arms; on bottled Whisky made in Germany bearing the picture of a Highland gillie; on gold and silver goods made abroad bearing British assay marks; on bags of sugar bearing letters commonly used in the United Kingdom as indicative of description of quality.

36. The use of the name of a port or place of destination on mere packing cases or outer wrappers in which goods are clearly not intended to be sold or exposed for sale, or, if exposed for sale, then in an export market, will not involve detention. Address marks, when they are merely and manifestly such for purposes of carriage only, are not to be treated as subject to the provisions of the Act.

(2) Statements, descriptions or numerals on labels or tickets applied to boxes, cartons, parcels, or other packages, which are manifestly intended only for the purpose of identifying articles for the convenience of dealers and shopkeepers, and are not specially intended to attract the eye of the purchaser, are not to be treated as trade descriptions.

Examples.—On bundles of hosiery, "hose brown merino, size 10"; on shoes, "enamelled leather, men's No. 6"; on hats, "brown felt, hard, No. 7."

This instruction does not apply to a mark or description on the goods themselves, nor to a description of quality, nor to a description containing the name of a place, country, manufacturer or trader, nor to a trade mark.

37. When labels, capsules or the like are imported bearing trade descriptions of wines or liquors, and there is reasonable ground to believe that they will be applied to wines or liquors separately imported after passing the Custom House, and that when so

applied they will amount to false trade descriptions, intimation should be sent to the Chief Excise authorities at the port of importation, in order that they may take steps to prevent goods bearing such false descriptions from passing into consumption.

C.—GOODS HAVING APPLIED TO THEM FALSE TRADE DESCRIPTIONS THAT ARE FALSE IN OTHER RESPECTS.

38. This class includes goods having applied to them trade descriptions that are false in respect of—
Section 2 (2) (b) of the Indian Merchandise Marks Act, 1889. Classes cases.

- (1) the number, quantity, measure, gauge or weight of the goods, or
- (2) the time at which they were made or produced, or
- (3) the mode of manufacture or production, or
- (4) the material of which the goods are composed, or
- (5) in respect of the goods being the subject of an existing patent or copyright.

It will be observed that a description of quality is not covered by this definition. Thus statements that goods are hand-made when they are actually machine-made, or that they measure 25 yards when they only measure 22, or that bottles have a capacity of 2 oz. when they have not that capacity, are false trade descriptions, but not, for instance, statements that a thermometer measures temperature in 1 minute when it really requires 5, or that a common watch is a chronometer, or which relate otherwise to the quality of goods.

Customs officers will detain goods falling under this class of their own motion.

The most important cases in the class affect yarn and piece-goods in respect of their measure, etc., under clause (1) and certain other goods in respect of the material of which they are composed under clause (4).

39. The standard of measure for yarn is the relation of length to weight, which is known as the cotton yarn.

count. The chief systems of count are (1) the British and (2) the metric.

British.

- (1) The British count may be defined as the number of hanks of a given yarn that weigh 1lb. avoirdupois, equivalent to the number of yards that weigh 8·3 grains. The hank is 840 yards in length, and includes 7 leas of 120 yards each. The unit of count is 1 hank to 1lb., equivalent to 840 yards to 7,000 grains, or 1 yard to 8·3 grains. The last formula is useful for calculating odd lengths.

The number of the count becomes higher in proportion as the length increases in relation to the weight. Thus if 2 hanks go to 1lb., or 2 yards to 8·3 grains, the yarn is of count No. 2 commonly described as 2s. Similarly if 20 hanks weigh 1lb., or 20 yards 8·3 grains, the yarn is 20s.

Metric.

- (2) The metric count for all yarn, with the exception of raw and prepared silk, represents a relation between metres and grammes, 1s being 1,000 metres to 500 grammes, or 2 metres to 1 gramme, equivalent to 1 yard to 7·9553 grains. The length of the hank is fixed at 1,000 metres. Thus 20s by this count represents yarn weighing 40 metres to the gramme, or 40 hanks of 1,000 metres to 500 grammes.

The one system may be counted into the other by the following formulae:—

The English yarn No. $\times 0.937$ = the metric No.
The metric yarn No. $\times 1.181$ = the English No.

Count of
silk yarn.

For raw and prepared silk, on the other hand, the count is the number of grammes weight in 10,000 metres. Thus 20s represents yarn of which 10,000 metres weigh 20 grammes.

Marking of
metric
count.

40. If yarn is imported marked with the metric count, the marking should be accompanied by the words "metric count," or other definite indication that it is packed on the metric system, as well as by

the necessary indication of foreign manufacture if it has been manufactured beyond the limits of the United Kingdom or British India. These indications should be conspicuous and accompany every application of the count.

41. Yarn is ordinarily made up in 5 or 10-lb. bundles containing a certain number of knots, which in turn contain a certain number of hanks: and, as contemplated in paragraphs III to V of Notification No. 1474, as subsequently amended, reproduced in Part II, there is or should be a definite relation between the number of knots in a bundle and the count. Thus in a 10-lb. bundle in which there are 10 hanks to the knot, the number of knots is, or should be, the same as the number of the count. Similarly, if such a bundle is made up with 20 hanks to the knot, the number of the latter is, or should be, half the number of the count, and so on. But such a make up does not of itself amount to a trade description of the count: to constitute the latter, as mentioned in rule 2 above, there must be a description or statement applied to the yarn, or an indication, direct or indirect, of the nature of a description or statement, including the use of any numeral, word or mark which according to the custom of the trade is commonly taken to be an indication of the count. Thus the mark "20s" applied to the wrapper of a bundle of yarn indicates that the count is 20, and in the absence of the words 'metric count' or other definite indication that the yarn is measured on the metric system, should be regarded as indicating further that it is measured by the British system.

42. Paragraphs 6 to 10 of Notification No. 1430 of the 6th April 1891, as subsequently amended, reproduced in Part II, describe the conditions under which a test of yarn may be undertaken and the method of the test, and paragraphs III to V of Notification No. 1474 of the 13th November 1891, as subsequently amended, reproduced in the same, declare what variations from the described length, weight, or count make trade descriptions false in a material respect.

In the case of Berlin wool, a trade description which shows an error in weight of less than 4 per cent., should not ordinarily be held to be false in a material respect, and, in the absence of any other

Make up
of cotton
yarn.

Testing of
yarn: vari-
ations
permissible.

Variations
permissible
for Berlin
wool.

reasons for suspecting fraud, consignments of this wool which show a shortage in weight of less than 4 per cent. may be passed without a penalty after requiring the importers to remove the original marks and to stamp the packets with the correct weight as ascertained in the Custom House. If, however, it is found that this concession is being systematically taken advantage of, the importers concerned should be warned that they are liable to fine which will be imposed if deficiencies in weight are observed to be habitual.

Appliances
for testing.

43. For testing yarn the appliances chiefly required include a scale weighing up to one-tenth of a grain, a wrap-reel, a swift and a stove for applying the stove test. These appliances should be the same as those used in the testing house of the Manchester Chamber of Commerce, and may be obtained on indent through the Local Governments. The instructions in the explanatory pamphlet issued by the Manchester Chamber of Commerce to accompany the reel should be carefully observed.

Stove test.

44. The stove test need only be applied in cases in which weight by the ordinary methods show the weight of the yarn to be short, or in which the feel and appearance of yarn indicate that it is abnormally moist or over-conditioned, or in which the importer demands the test. A fee of Rs. 5 (five) will be levied from an importer demanding the test, but will be refunded if the test fails to support the original determination of count and length by the Customs officers. If more than one application of the test is demanded, a further fee of Rs. 5 will be levied for each fresh test, the whole sum charged being retained or refunded according to the final result.

Condition-
ing.

The *conditioning* of yarn is the term applied to the quantity of moisture a given yarn contains.

Under the stove test yarn is reduced to an absolutely dry condition and then weighed. In the case of cotton yarn a regain of $8\frac{1}{2}$ per cent. is next added, and the figure obtained is regarded as the actual weight under normal conditioning to be adopted for the purposes of determining whether a given length of yarn is of full or short weight. For the regains to be allowed in the case of silk, or woollen, or other

yarns, a reference may be made to the tables of official standards supplied with the stove test apparatus.

45. The following is an example of the calculation to be made in respect of any hank tested in verification of the count of cotton yarn under these rules:—

Declared count	30
Weight of hank on being taken out of bundle	250 grains.
Length of hank ascertained by reeling	820 yards.
Weight after application of stove test	220 grains.
Regain at $8\frac{1}{2}$ per cent.	187 "
Weight in corrected condition	2387 "
Count in original condition	$\frac{820 \times 100}{250 \times 8.3} = 27.3$
Count in corrected condition	$\frac{820}{238} \times 8.3 = 28.63$
Difference from count declared	1.37
Percentage of difference from count declared	4.6

The length of the hank tested is thus short by 20 yards, but the difference of count is within the 5 per cent. margin allowed by Notification No. 1474 of the 13th November 1891, as subsequently amended.

46. Trade descriptions of measure and the like applied to piece-goods include (1) the descriptions of length stamped on certain cotton and woollen goods in accordance with clause (f), section 18, of the Sea Customs Act, in respect of which rules 56 to 58 below may be consulted; and (2) other trade descriptions of number, measure, or weight applied to the above or any other piece-goods. Paragraph 4 of Notification No. 1430 of the 6th April 1891, as subsequently amended, limits the occasions on which descriptions of length should be tested, and paragraphs I and II of Notification No. 1474 of the 13th November 1891, as subsequently amended, prescribe the limits of variation beyond which descriptions, whether of length or width, on certain chief classes of piece-goods are to be deemed false in a material respect.

47. In testing for *length* the measurement should be made along the selvage. In testing for *width* the cloth should be measured by each of the following methods,—the mean of the measurements so taken being adopted—and care should be exercised in applying each method to select a portion of the cloth where the creases are fewest, and the warp and weft respectively as straight as possible:—

- (1) A double-fold of the cloth should be laid on the table and the creases stroked

out, so that it may lie perfectly flat. The measuring rod should then be placed across the cloth, and the finger and thumb run down the rod on each side of it across the cloth so as to once more flatten the creases. Care should be taken in doing this to see that whilst the creases are smoothed out, stretching is avoided and the warp threads remain perpendicular to the rod. The measurement should then be recorded.

- (2) A fold of the cloth should be taken, and the doubled edge held between a finger and thumb at each end, and extended over the measuring rod which should be flat on the table. The extension should be sufficient to remove the creases, but not to stretch the warp out of the perpendicular.

48. In taking these measurements the peculiarities of the cloth under measure should not be lost sight of. Thus cloths, like grey shirtings, that are pressed but not folded gain slightly, but by no means uniformly, in breadth in the course of pressing; whilst those that are folded, like mulls, lose in the folding more than they gain in the pressing. These effects again are apt to disappear with goods that have been opened and handled in a shop. Loose cloths like mulls, especially if shrunk in the course of manufacture, are naturally liable to bag and stretch more than others, and owing to their flimsiness it is difficult to apply the first method of measurement satisfactorily: such cloths also are liable to drag in the weaving towards the end of a long piece, and the folds will sometimes not coincide with the weft. Due allowances should be made for these characteristics. If it is found difficult to determine a reasonable degree of tension for purposes of measurement, the mean between stretching to the full, and not stretching, may afford the best guide.

The influence of stretching for length on the width has always to be taken into account. A semi-circular appearance in the selvaige across the end of a piece will show that the cloth has been stretched

lengthwise in the making, in which case it must lose in length as the weft is straightened to measure the width. It may then have to be ascertained whether the trade description of length does not become false in the process of making that for width correct. To ascertain this a measurement along the selvages both lengthwise and across may be the best guide.

49. (1) In the case of (a) white zinc, red lead, ^{Goods having} white lead and similar substances, (b) linseed oil ^{applied to} and (c) turpentine, which are described as such, ^{no} ^{them false} ^{trade} qualifying description need be required when the ^{descriptions} ^{in respect of} percentage of impurities is less than 5 per cent.

(2) When the percentage of impurities exceeds 5, but is less than 50, an adequate qualifying description such as "adulterated" or "reduced" ^{of which} ^{the material} ^{they are} ^{composed.} should be required.

(3) When the percentage of impurities is 50 or exceeds 50, the actual percentage of adulteration must be marked in addition to the adequate qualifying description.

The marking where required under either of the two preceding clauses should be conspicuous and accompany every application of the description.

50. (1) In the case of white zinc, white lead, red lead and similar substances, the adulteration should be calculated on solid pigment alone and not on the solid pigment and oil together. In the case of these articles, a margin of 5 per cent. may be allowed before requiring a description of marking already applied to be altered. For example, a keg of red lead is marked 50 per cent. reduced and the chemical analysis shows 42 per cent. red lead, 8 per cent. oil and 50 per cent. other matter. According to this analysis the keg should be marked 54.3 per cent. reduced. As, however, the difference between this percentage and that contained in the description already applied is less than 5 per cent., the marking need not be objected to.

(2) In the case of turpentine this margin may be increased to 10 per cent.

51. The values declared for linseed oil, turpentine, white lead, red lead, white zinc, and similar substances afford a guide to the correctness of the ^{Values a} ^{test of} ^{marking.}

marking. A list of prices should therefore be maintained at each port and periodically revised, showing the current rates for these goods in different degrees of adulteration or reduction. For goods adulterated to the extent of less than 50 per cent., samples should be sent for chemical analysis when the values declared are materially less than the current rates. For goods adulterated to the extent of 50 per cent. or more, samples should be sent in all cases. But when any white lead, red lead, white zinc or any other similar substance of a particular manufacture has by previous test been found correct, a sample need not be sent for analysis on every subsequent importation. An occasional test will in such cases suffice.

Goods need not be detained pending analysis, unless from the invoice or otherwise there is good reason to believe that they are marked as genuine when they are actually reduced. In other cases they may be released on a letter of guarantee from the importers that they will not be delivered to purchasers without permission of the Collector or Chief Customs Officer.

Star silver,
etc.

52. Descriptions like "Star silver," "Art silver," "Potosi silver," "Aluminium gold," "Arcadian gold," "Real gold beads," and the like, when applied to articles not made of silver or gold, should be treated as false trade descriptions. "German silver" and "Nickel silver" may, however, be passed without objection as these descriptions are well known to all classes likely to be affected, and have been in use for a sufficiently long period to render it improbable that a purchaser would be deceived by their use. No objection should be taken to the use of such marks as "Potosi," "Nevada," etc., provided the words "silver" and "gold" are omitted.

52A. The terms such as "Superfine," "Spanish stripes" and "Flannel" which denote pure woollen material should be treated as constituting a false trade description when used in connection with mixed or cotton fabrics made up in imitation of woollen goods unless accompanied by the words "Mixed" or "Cotton" as a counter-indication. No objection should, however, be taken to the application of

the term "Merino" to hosiery or underwear made of cotton and wool mixed, or of the term "Velvet" or "Velveteen" to material made wholly or in part of cotton; nor should any objection be taken to the application of the description "All wool" on woollen hose of which the heels and toes are cotton and wool mixed, in cases in which the amount of cotton used is inconsiderable and is added only for the purposes of strengthening the heels and toes.

52B. Uncondensed milk should contain 3 per cent. of fat, while condensed milk should contain at least 9 per cent. of fat. In the case of condensed milk so described but which contains less than 9 per cent. of fat, an adequate qualifying description such as "prepared from skimmed milk" should be required.

Note.—The percentage of fat in sweetened condensed milk should be calculated on the whole product, as in the case of unsweetened milk, and not merely on the actual milk constituents of the product.

53. In dealing with other false trade descriptions of material, or of number, quantity, measure, etc., or under any other of the subheads specified in rule 38, due consideration should be given to the provision that a trade description to be false must be "untrue in a material respect."

54. When any indications that goods are of a certain standard composition accompany their descriptions such as the letters B. P. (British Pharmacopoeia) in the case of drugs, the description should be regarded as false unless the composition is in accordance with the standard. The letters B. P., when applied to goods made outside the United Kingdom or British Possessions, require a counter-indication of origin, even though the composition of the goods be correct.

55. Descriptions may amount to false trade descriptions although literally true; thus "Lavender water," "Kanagan water," "Eau de Cologne" and "Florida water," or the terms "Extract," "Essence" applied to an imitation of scent containing no spirit would amount to a false trade description, because spirit is one of the ingredients of these preparations in the ordinary acceptation of these terms. Similarly if the term "Bou

Bons" were applied, in the Indian market, to tablets containing santanine or other worm medicine, so regularly as according to the custom of the trade to be commonly taken to be an indication that the tablets contained this drug, they would amount to a false trade description when applied to goods made up in imitation of such tablets, but containing none of the medicine in question.

D.—PIECE-GOODS WHICH HAVE NOT THE LENGTH PROPERLY STAMPED ON EACH PIECE.

Prohibition of importation.

56. The importation of these goods is prohibited by clause (f), section 18, of the Sea Customs Act. The prohibition extends to "piece-goods such as are ordinarily sold by length or by the piece," and by Notification No. 1430, dated 16th April 1891, as subsequently amended, reproduced under Part II, these are defined as including woollen goods, that is, woollen piece-goods of all kinds, and certain specified descriptions of cotton goods. The Notification defines the conditions under which goods should be examined to test the accuracy of the stamping, and exempts goods for personal use in the terms of the general exemption in rule 1 (b).

Exemptions.

57. Under the definition quoted goods not being of cotton or woollen material, such as silk and velvet, are exempt. Alpaca should be treated as wool, and cotton mixed with silk, or wool mixed with silk, as cotton and woollen, respectively, provided that the cotton or wool is in each case a material constituent of the fabric. Shawls and blankets whether woollen or cotton are excluded, because they are sold by the unit and not by length or by the piece, whilst handkerchiefs, printed or plain, do not fall within the cotton goods specified for the reason that they are ordinarily sold with reference to the number of handkerchiefs, without consideration of the measured length of the piece in which they are contained. Fents, which comprise small pieces of cloth that are sold by weight, are also exempt, but cut lengths so long as they are still sold by length or by the piece should be marked in the manner described below. Cotton *sarongs* when imported in lengths greater than $2\frac{1}{2}$ yards should be stamped.

In addition to falling within the descriptions defined, goods, to be liable to stamping, must have been manufactured either beyond the limits of India, or if in India, then in territories beyond the limits of British India and on premises which, if in British India, would be a factory under the Factories Act. Thus goods manufactured in a factory at Bhavnagar, one of the Native States of Kathiawar, might be liable, whereas those manufactured on a handloom in the same place would be exempt.

58. In marking the length the stamping of Nature of numerals only is insufficient; the word "yards" stamping or "yds." should accompany the numerals, and required. with cut lengths or pieces of the kind described above, the number of pieces should be marked as well as the yards on the front or outer face fold of the cut piece, the figures being presented in a way to show clearly what they are intended to mean; thus $\frac{40 \text{ yards}}{3}$ would not suffice, but $\frac{40 \text{ yards}}{3 \text{ pieces}}$ or "40 yards, 3 pieces," or the like would meet the requirement.

Note.—This ruling should not be applied to ribbons, cotton embroideries, laces, trimmings and the like, which are not piece-goods.

The length must be in standard yards or fractions of a yard, and should represent the actual length of the goods as imported, and not the length before shrinkage or dryage, resulting from processes such as dyeing, or from atmospheric changes which can reasonably be foreseen. Marking in inches may be permitted on cloths of small dimensions and delicate make in accordance with the custom of the trade. The marking should be such as will not ordinarily be removable except by washing the fabric, or, in the case of goods that are not ordinarily washed, it should be of such a nature that it is not likely to be obliterated in the ordinary course of handling before the goods reach the purchaser. Marks, which are stitched on the fabric and are easily removable by cutting should not be permitted.

The marking should be conspicuous, in a different colour from that of the fabric, upon the fabric itself, not upon a removable label or ticket, and in a conspicuous place upon the fabric. It should not

be upon an inner fold which cannot readily be seen, nor upon a wholly detached piece, but it may be upon a piece that is partly detached without being entirely severed. In the case of *sarongs* which are required under paragraph 57 to be stamped, the stamping may be permitted on the selvaige in the interfold instead of on the upper-most fold of the cloth.

APPENDIX A.

Notice in respect of detention of goods alleged to be liable to confiscation under the Sea Customs Act, 1878.

To the Collector
Chief Customs Officer at the port of _____.

I we hereby give notice that the undermentioned goods are about to be brought into British India at _____ have been on or about the _____ day of _____ in the

(1) _____ from _____, and that they are (1) Descrip-
liable to confiscation under the provisions of the Sea Customs Act, 1878, for reasons stated below—
tion of
vessel and
name or
other details
for identi-
fication.

Details of goods. (2)

(2) State the number of packages, marks, description of goods and any other particulars necessary for identification.

Grounds of liability to confiscation. (3)

(3) State in what way the marks or other indications on the goods infringe the provisions quoted, giving copies if available of the genuine and counterfeit marks, etc.

Mr. _____ of _____ is prepared to become surety in such bond as may be required upon detention of the goods. Reference as to his sufficiency for the penalty of the bond may be made to Messrs. (4) _____.

I request that the said goods be detained and dealt with accordingly. Dated this _____ day of _____.

(4) Bankers,
Solicitors,
etc.

A.B. (or Agent for) _____

APPENDIX B.

Indemnity in respect of detention of goods alleged to be liable to confiscation under the Sea Customs Act, 1878.

We _____
 having requested the Collector of Customs
 Chief Customs Officer at _____
 _____ to detain the
 goods mentioned below which we allege or believe to
 be or about to be _____
 have been brought into British India at that Port and to
 be liable to confiscation under the provisions of the Sea Customs
 Act, 1878, we hereby jointly and severally for ourselves and
 our respective heirs executors or administrators and represent-
 atives undertake and agree with the Secretary of State for
 India in Council and also separately with the said
 Collector of Customs
 Chief Customs Officer at _____ and his successors
 in office and their representative assigns in the event and in
 consideration of the said goods being so detained as aforesaid
 for any period whatever to indemnify and keep indemnified
 the Secretary of State for India in Council and the said
 Collector of Customs
 Chief Customs Officer and all other officers of Customs and other
 officers of the Government of India or servants of the Secretary
 of State for India in Council and their representative successors
 in office heirs executors administrators representatives and
 assigns from and against all actions proceedings claims and
 demands costs damages or expenses for or on account or in
 respect or in any way arising out of the detention as aforesaid of
 the said goods or any part thereof for any period whatsoever or
 for or on account or arising out of any act thing or proceeding
 done or omitted to or in respect of or in connection with or any
 loss damage or deterioration of to or in the said goods while so
 detained or before or after the detention thereof or on account
 or by reason of such detention or of any other act thing or
 proceeding at any time done or taken or omitted with a view
 to or respecting the detention or confiscation of the said goods
 or otherwise to or in respect of or in relation to the
 said goods in pursuance or in consequence of our said
 request. And we hereby expressly declare that if the said
 Collector of Customs
 Chief Customs Officer shall see fit to detain the said goods (it being
 a matter entirely within his discretion whether they shall be
 detained or not) he shall be at liberty to detain them for such
 period whether provided for by rule or not as he shall in his
 absolute and uncontrolled discretion think fit and to release and
 deliver them at any time or to take such other action with
 respect thereto as he shall so think fit and the liability of us

and each of us and of our respective heirs executors or adminis-
 trators and representatives hereunder shall not be discharged
 or in any way impaired or affected by the release or delivery
 thereof by him at any time.

Particulars of goods.

APPENDIX C.

Articles imported from Africa, Arabia, Persia, and Persian Gulf and Turkey in Asia.

Almonds.
 Aloes, Socotra.
 Amber.
 Aniseed.
 Arsenic.
 Asafetida.
 " coarse, Hingra.
 Attary (Persian).
 Bees' wax.
 Betelnuts.
 Bones.
 Bran.
 Brimstone (Amalsara).
 Buzgand (Gulpieta).
 Calumba root.
 Cheese.
 Chillies, dry.
 Cloves.
 Clove stems.
 Cloves, Narlavaung.
 Coccanuts.
 " sea.
 Coffee (Mocha).
 Copra.
 Corals.
 Cotton, raw.
 Cowries.
 Cowras.
 Currants.
 Dates, dry.
 " wet.
 Dawa.
 Dhuppanadi.
 Dragon's blood.
 Drugs (Persian) and medicines.
 Ebony wood.
 Elephant tusks.
 Figs, dry.
 Fish, dry (salted and unsalted).
 Fishmaws.
 Fruits, fresh and dry.
 Galmuts (Persian).
 Garlic.

Genda horns.
 Ghee.
 Gowla.
 Grain of sorts.
 Groundnuts (with and without shells).
 Gum, Ammoniac.
 " Arabic.
 " Bdellium.
 " Bysabul (Coarse Myrrh).
 " Copal.
 " false.
 " Hirsabul (Myrrh).
 " Olibanum.
 " other sorts.
 Hair.
 " bags, goat.
 Hajrats—How.
 Halwa.
 Hazelnuts.
 Hides and skins (tanned and untanned).
 Honey.
 Horns.
 Kishmish.
 Lava wood.
 Lavender flowers.
 Lemons, dried.
 Liquorice root.
 Long pepper.
 Maddar or manjit.
 Mats.
 " cupsas.
 " saffas.
 Mother-of-Pearl Shells.
 Moya teeth.
 Nakh, tortoise.
 Nakhala.
 Ochre, red.
 Orange peel.
 Orchilla wood.
 Orris or Kewda root.
 Pearls.

Pellitory roots.
 Pistachio nuts.
 Prunes (alu bokhara).
 Quince, bihidana.
 Raisins, red.
 " black.
 Reeds, black.
 Rose flowers, dried.
 Rose water.
 Rumi Mustaki.
 Saffron.
 Sajikhar.
 Salep.
 Samooderfal.
 Samoodrafen.
 Sankhli.
 Seed of sorts.
 Senna leaves.
 Sharkfins.
 Shells, tortoise.
 Silk, raw.
 Storax.
 Talc, mica.
 Tanning barks.
 Tobacco (manufactured and unmanufactured).
 Vegetables, other sorts, fresh and dry.
 Vinegar.
 Walnuts.
 Wood.
 Wool, raw.

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